

SUMMARY REPORT OF INVESTIGATION¹**I. EXECUTIVE SUMMARY**

Date of Incident:	July 22, 2015
Time of Incident:	01:41 am
Location of Incident:	[REDACTED] Chicago, IL 60621
Date of COPA Notification:	July 22, 2015
Time of COPA Notification:	02:10 am

On 22 July 2015, Beat [REDACTED] (Officers [REDACTED] and [REDACTED]) was traveling west on [REDACTED] Street in their marked Chicago Police SUV. As the officers crossed [REDACTED] Street they saw two groups of individuals on the street in the [REDACTED] Street. The officers continued west on [REDACTED] Street, then north on [REDACTED] Street, then east on [REDACTED] Street. Officers [REDACTED] and [REDACTED] then drove south on [REDACTED] Street moving toward the groups of people in the street. When the officers approached the middle of the block they saw [REDACTED] quickly separate himself from the group and run south on [REDACTED] Street. Both officers began to chase Mr. [REDACTED] and saw Mr. [REDACTED] holding a gun. Officer [REDACTED] yelled, "Gun!" Mr. [REDACTED] turned toward the officers while holding his gun, at which time both officers discharged their firearms several times at him. Mr. [REDACTED] continued to run south on [REDACTED] Street. At approximately [REDACTED] Street, Mr. [REDACTED] stumbled and fell to the ground, dropping his gun near the base of a nearby tree. Mr. [REDACTED] then stood up and continued to run east through the empty lot. Officer [REDACTED] continued to chase Mr. [REDACTED] while Officer [REDACTED] remained by Mr. [REDACTED] gun to secure it because of the numerous people on the street at that time. Officer [REDACTED] chased Mr. [REDACTED] east across the empty lot, across the alley, and through the south gangway of [REDACTED]. Mr. [REDACTED] ran east across [REDACTED] Street, through the empty lot, and was subsequently apprehended in the alley at approximately [REDACTED] Street.

II. INVOLVED PARTIES

Involved Officer #1:	Star # [REDACTED] Employee # [REDACTED] DOA: [REDACTED], 2009; Rank: Police Officer; Unit of Assignment: [REDACTED] DOB: [REDACTED], 1980; Male; Hispanic.
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¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

Involved Officer #2:

Star # [REDACTED] Employee # [REDACTED] DOA: [REDACTED]
[REDACTED], 2009; Rank: Police Officer; Unit of Assignment: [REDACTED] DOB: [REDACTED], 1985; Male; Hispanic.

Subject #1:

[REDACTED] DOB: [REDACTED], 1995; Male; Black.

III. ALLEGATIONS

Any discharge of an officer's firearm results in a mandatory notification to COPA. This investigation was initiated pursuant to such notification. However, COPA determined evidence did not exist which would require allegations of excessive force against Officers [REDACTED] and [REDACTED]

IV. APPLICABLE RULES AND LAWS

General Orders

1. Chicago Police Department General Order, GO 03-02-03; Deadly Force

Federal Case Law

1. *Graham v. Connor*, 490 U.S. 386 (1989)
2. *Estate of Phillips v. Milwaukee*, 123 F.3d 586 (7th Cir. 2003)
3. *Tennessee v. Garner*, 471 U.S. 1 (1985)
4. *Plumhoff v. Rickard*, 134 S.Ct. 2012 (2014)
5. *Muhammed v. City of Chicago*, 316 F.3d 380 (7th Cir. 2002)
6. *Sherrod v. Berry*, 856 F.2d 802 (7th Cir. 1988)
7. *Scott v. Edinburg*, 346 F.3d 752 (7th Cir. 2003)
8. *Montoute v. Carr*, 114 F.3d 181 (11th Cir. 1997)
9. *Leong v. City of Detroit*, 151 F.supp.2d (E.D.Mich. 2001)
10. *Anderson v. Russell*, 247 F.3d 125 (4th Cir. 2001)
11. *Long v. Slaton*, 508 F.3d 576 (11th Cir. 2007)
12. *Childs v. City of Chicago*, 2017 U.S. Dist. LEXIS 45156 (N.D.Ill. 2017)
13. *Weinmann v. McClone*, 787 F.3d 444 (7th Cir. 2015)
14. *Estate of Starks v. Enyart*, 5 F.3d 230 (7th Cir. 1993)

State Laws

1. Illinois State Statute 720 ILCS 5/7-5
2. Illinois State Statute 720 ILCS 5/7-1(a)

V. INVESTIGATION²

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

a. Interviews

During a telephone conversation on 09 December 2015, Mr. [REDACTED] attorney, [REDACTED] [REDACTED], stated that Mr. [REDACTED] did not want to be interviewed and would not cooperate with this investigation.

In a statement to IPRA on 28 July 2015, [REDACTED] stated that she has known Mr. [REDACTED] for 15 years, and they were currently engaged to be married. Ms. [REDACTED] stated that on the night of this incident she, Mr. [REDACTED] and approximately 20 other people were outside celebrating the life of a childhood friend who was killed by a drunk driver in 2012. Ms. [REDACTED] stated the group was mainly drinking Remy Martin Cognac and Hennessy Cognac. Ms. [REDACTED] stated that Mr. [REDACTED] was drinking Remy Martin Cognac. Ms. [REDACTED] stated she, Mr. [REDACTED] and about 6 other people were standing on [REDACTED] Street, near a parked car, when a marked police vehicle pulled up and stopped near them. Mr. [REDACTED] began to walk away across the street when the officers said to him, "Come here."⁵ Ms. [REDACTED] did not know why, but Mr. [REDACTED] began to run south on [REDACTED] Street. Both officers immediately ran after Mr. [REDACTED]. After the officers ran a couple of feet, Mr. [REDACTED] appeared to slow down. The officers then repeatedly shot at Mr. [REDACTED] who sped up and continued to run away. Ms. [REDACTED] did not know why the officers shot at Mr. [REDACTED] stating that Mr. [REDACTED] never turned and faced the officers. Ms. [REDACTED] stated that the only thing Mr. [REDACTED] held in his hands was a cup, which he dropped when he ran away.

Ms. [REDACTED] stated that she and approximately 15 to 20 of the people in the group chased after the officers as they ran after Mr. [REDACTED]. Ms. [REDACTED] stated that they were begging the officers to stop shooting. Mr. [REDACTED] fell to the ground near the east sidewalk of [REDACTED] Street. Ms. [REDACTED] stated that as Mr. [REDACTED] sat on the ground she saw blood on the front right chest/shoulder area. Ms. [REDACTED] added, "And the police, you know, we yellin' at the police so they turned and started facin' us. And you know, he got up when he noticed that the police wasn't lookin' at him no more. He got up and he took off runnin' and one officer took off behind him."⁶ Mr. [REDACTED] got to his feet and ran east through an empty lot toward the alley. One of the officers chased him while the other officer remained near the spot that Mr. [REDACTED] fell. Ms. [REDACTED] stated that she ran north and then east through a different empty lot but she was unable to find Mr. [REDACTED] or the officer that chased him.

Ms. [REDACTED] stated that she never saw Mr. [REDACTED] in possession of a firearm that night. Ms. [REDACTED] also stated that she never saw a handgun on the ground near where Mr. [REDACTED] fell. Ms. [REDACTED] also stated that she spoke to Mr. [REDACTED] while he was in Cook County Jail and that he told her that he sustained a gunshot wound to his chest and a graze wound to his leg. Ms. [REDACTED] provided the

³ Attachment #68.

⁴ Attachment #37.

⁵ Transcript of [REDACTED] P. 10, L. 25.

⁶ Transcript of [REDACTED] P. 10, L. 25.

names and contact information of two potential witnesses: her brother [REDACTED] and a friend, [REDACTED]

In a statement to IPRA on 31 July 2015, [REDACTED] stated he and Mr. [REDACTED] have been friends for several years. On the night of this incident he was attending a gathering celebrating the life of a person who passed away. Mr. [REDACTED] stated that he, as well as numerous other partygoers, were drinking alcohol. Mr. [REDACTED] believed that Mr. [REDACTED] was drinking Remy Martin Cognac, but he did not think that Mr. [REDACTED] was intoxicated, adding that, "He actually holds his liquor pretty well."⁸ Mr. [REDACTED] also stated that he was standing in the front yard of a house on the east side of [REDACTED] Street at approximately [REDACTED] or [REDACTED] [REDACTED] Street with several other people when he heard numerous gunshots. Mr. [REDACTED] then saw Mr. [REDACTED] running south on [REDACTED] Street with two uniformed police officers chasing him on foot. Mr. [REDACTED] stated that the officers were shooting at Mr. [REDACTED] as they ran after him. The officers were about 15 or 20 feet behind Mr. [REDACTED]. Mr. [REDACTED] added that he did not see muzzle flashes from either officers' firearm. Mr. [REDACTED] added that his view of the officers and Mr. [REDACTED] was partially obstructed by cars parked next to the curb and a tree. Mr. [REDACTED] also stated that he did not witness the beginning of the incident involving Mr. [REDACTED] and the two officers, adding that he was unaware that the officers were there before he heard the gunshots.

Mr. [REDACTED] stated that Mr. [REDACTED] ran south on [REDACTED] Street for approximately 3 or 4 houses, and then ran east between two parked cars and fell onto the parkway grass. Mr. [REDACTED] began recording the incident with his cell phone⁹ as he and numerous other people ran to where Mr. [REDACTED] fell. According to Mr. [REDACTED] he began recording after Mr. [REDACTED] fell to the ground. Mr. [REDACTED] stated that about 30 people ran toward Mr. [REDACTED] and the officers, hysterically screaming, "Why'd you shoot'em in the back?"¹⁰ According to Mr. [REDACTED] the scene became, "a lil' ugly."¹¹ Mr. [REDACTED] explained that numerous people were yelling at the officers, who then turned their attention on the crowd of people. Mr. [REDACTED] stated, "And the, you know, the police pointed guns in our direction and then, uh, [REDACTED] got up and ran."¹² Mr. [REDACTED] stated that he saw blood on the front of Mr. [REDACTED] white t-shirt. Mr. [REDACTED] stated that the blood was near the right side of Mr. [REDACTED] chest/shoulder area. As the group of people approached and yelled at the officers, Mr. [REDACTED] ran east through an empty lot chased by one of the officers. Mr. [REDACTED] described that officer as being a male and possibly Hispanic. The second police officer remained near the spot where Mr. [REDACTED] fell. Mr. [REDACTED] stated that he did not see Mr. [REDACTED] after he got up and ran through the empty lot.

⁷ Attachment #28.

⁸ Transcript of [REDACTED] P. 8, L. 8.

⁹ The recording did not show the actual shooting nor Mr. [REDACTED] at any time. (Att. 30)

¹⁰ *Id*; P. 13, L. 23.

¹¹ *Id*; P. 13, L. 24.

¹² Transcript of [REDACTED] P. 13, L. 24.

Mr. [REDACTED] stated that he never saw anything in Mr. [REDACTED] hands when he was being chased by the officers. Mr. [REDACTED] also never saw a gun on the ground near where Mr. [REDACTED] fell. Mr. [REDACTED] did not believe Mr. [REDACTED] had a gun at the time of the incident, but when asked if Mr. [REDACTED] was known to carry a gun he laughed and replied, "It's uh, it's Englewood. Everyone's been known to carry a gun here or there."¹³

[REDACTED] and [REDACTED] were identified as possible witnesses via 911 calls made on the night of the incident. In subsequent telephone calls Ms. [REDACTED] and Ms. [REDACTED] denied witnessing this incident and denied calling 911. Both women refused to be interviewed or provide any additional information. Ms. [REDACTED] confirmed that she witnessed the incident, but she also refused to be interviewed or provide any additional information.

In a statement to IPRA on 04 August 2015, Officer [REDACTED] stated that on the night of this incident he was working with Officer [REDACTED]. They were assigned to a marked police vehicle, with Officer [REDACTED] driving.

Officer [REDACTED] stated that as they travelled west on [REDACTED] Street he observed a crowd of 20-30 people standing on the street on the [REDACTED] South block of [REDACTED] Street. The officers drove around the block and drove south on [REDACTED] Street from [REDACTED] Street. Officer [REDACTED] stated that they traveled south on [REDACTED] Street at approximately 10 miles per hour. Several people began to walk away as the officers drove down the street. Mr. [REDACTED] was walking south in the middle of [REDACTED] Street, blocking the officers' path. Officer [REDACTED] stated that Mr. [REDACTED] turned around and faced them as he appeared to adjust something in the front of his waistband. Officers [REDACTED] shifted the vehicle into park, and they exited their police vehicle. Officer [REDACTED] said something to Mr. [REDACTED] but he could not recall what he said. Officer [REDACTED] stated that Mr. [REDACTED] immediately ran southeast on [REDACTED] Street. Officers [REDACTED] and [REDACTED] chased Mr. [REDACTED] on foot. Officer [REDACTED] stated that as he chased Mr. [REDACTED] he saw Mr. [REDACTED] was holding a handgun. Officer [REDACTED] stated that he was about 10 feet from Mr. [REDACTED] when he noticed Mr. [REDACTED] holding the handgun. Officer [REDACTED] added that he was closer to the east side of the street while Officer [REDACTED] was closer to the west side as they chased Mr. [REDACTED].

Officer [REDACTED] stated that Mr. [REDACTED] began to turn his body in a clockwise direction. Fearing that Mr. [REDACTED] was about to shoot at his partner, Officer [REDACTED] stopped running, pulled his firearm from its holster, and fired approximately 10 times at Mr. [REDACTED]. At the same time, Officer [REDACTED] heard Officer [REDACTED] gunshots, but he did not know who fired first.

Mr. [REDACTED] ran behind a parked car and collapsed to the ground. Officer [REDACTED] saw blood on the front of Mr. [REDACTED] shirt. Several other people immediately approached the officers. Officer [REDACTED] stated that some of the people were screaming at him and Officer [REDACTED]. Officer [REDACTED] stated that while his and Officer [REDACTED] attention was focused on the crowd, Mr. [REDACTED] stood up and ran east through an empty lot toward the alley. Officer [REDACTED] chased Mr. [REDACTED] and Officer [REDACTED]

¹³ *Id*; P. 32, L. 4.

¹⁴ Attachments 62, 73, 74, 75.

¹⁵ Attachment #32.

_____ stayed behind. Officer _____ explained that he did not see Mr. _____ drop his gun, but he also did not see a gun in his hands after Mr. _____ got up and ran. Officer _____ further explained that if Mr. _____ had dropped his gun, Officer _____ could have prevented a person from the crowd from retrieving it, since he stayed behind. As Officer _____ continued to chase Mr. _____ Officer _____ stated that he did not shoot again because Mr. _____ did not make any sort of movements he perceived to be threatening. Officer _____ chased Mr. _____ to the alley between _____ and _____ Streets where Mr. _____ collapsed and was subsequently taken into custody.

In a statement to IPRA on 04 August 2015, Officer _____ stated that he and his regular partner, Officer _____ were traveling west on _____ Street in their marked police vehicle, with Officer _____ driving. Officer _____ stated that as they approached the intersection of _____ Street, he saw a group of approximately 20-30 people in the street just north of the intersection. Officer _____ stated that people in the group were drinking alcohol, and explained that he saw open bottles of alcohol and people holding plastic cups. Officer _____ stated that he alerted Officer _____ of the people drinking in the street. Officer _____ then drove their police vehicle around the block. Officer _____ explained that they drove west on _____ Street past _____ Street, north on _____ Street, east on _____ Street, and finally south on _____ Street. Officer _____ stated that they drove south at a slow rate of speed on _____ Street. Officer _____ explained that most of the group stood to the sides of the street as he and Officer _____ drove by, except for Mr. _____. Officer _____ stated that Mr. _____ walked south, ahead of them in the middle of the street. Officer _____ stopped the vehicle and he and his partner exited their vehicle. Officer _____ saw Mr. _____ turn and nervously look at them. Officer _____ identified himself as a police officer and ordered Mr. _____ to come to the officers. Mr. _____ continued to walk away from the officers. Mr. _____ walked south on _____ Street and appeared to adjust the front of his waistband band with his right hand. Officer _____ could not see the front of Mr. _____ body, and therefore could not see what exactly he was doing with his hands. The officers walked behind Mr. _____ about 10-15 feet. Officer _____ was directly behind Mr. _____ and Officer _____ was behind and to the right of Mr. _____.

Officer _____ stated that Mr. _____ proceeded to walk in a southeastern direction across _____ Street. Officer _____ again identified himself as a police officer and ordered Mr. _____ to come to them. Mr. _____ turned and looked at them again but continued to walk away. Officer _____ stated that he began to walk a little faster to catch up to Mr. _____. Mr. _____ turned his head and looked at the officers a third time and then began to run. Officer _____ stated that he and Officer _____ chased Mr. _____ and after several feet he saw Mr. _____ holding a semi-automatic handgun in his right hand. Officer _____ stated that he heard Officer _____ yell, "Gun!"¹⁶ Officer _____ stated that Mr. _____ turned his upper body in a clockwise direction as he ran. Mr. _____ began to raise his right arm in Officer _____ direction, and fearing that Mr. _____ was about to shoot at him, Officer _____ discharged his firearm several times. Officer _____ stated that he also heard Officer _____ discharge his firearm several times. Mr. _____ ran several more feet before falling to the grass on the parkway on the east side of _____ Street. Officer _____ stated that he saw Mr. _____ drop his handgun to the ground near a tree. Officer _____ stated that almost immediately a crowd of people approached them, yelling and threatening the officers, who stood near Mr. _____ as he sat on the ground. Officer _____ stated that his attention

¹⁶ Attachment #34.

¹⁷ Attachment #34 at 15:14

was focused on the hostile crowd when Mr. [REDACTED] got to his feet and ran east through an empty lot toward the alley between [REDACTED] Street and [REDACTED] Street. Officer [REDACTED] immediately chased Mr. [REDACTED] while Officer [REDACTED] remained near where Mr. [REDACTED] originally fell. Officer [REDACTED] explained that he stood guard over the handgun Mr. [REDACTED] dropped. Officer [REDACTED] heard Officer [REDACTED] make the notification over the radio that Mr. [REDACTED] had been apprehended and that an ambulance was needed.

A **canvass**¹⁸ conducted on 23 July 2015 did not provide additional witnesses or information.

During a **second canvass**¹⁹ on 31 July 2015, [REDACTED] refused to be interviewed but agreed to come to the offices of the Independent Police Review Authority on 05 August 2015²⁰ for an interview. The canvass did not produce any additional witnesses or relevant information.

Attempts to contact the possible witnesses, ([REDACTED] and [REDACTED]) via telephone calls, letters, and personal visits, were unsuccessful.²²

b. Digital Evidence

The **Office of Emergency Management and Communication (OEMC) PCAD Event Query Printouts**²⁶ stated that on 22 July 2015, at 0141 hours, Beat [REDACTED] (Officers [REDACTED] and [REDACTED] notified dispatch they were involved in a foot-chase. At 0142 hours Beat [REDACTED] notified dispatch that shots were fired by the police. At 0155 hours, Beat [REDACTED] reported to dispatch that shots fired by the police, striking the offender on the chest/armpit area.

Evidence Technician Photographs²⁷ depict the scene of the incident. The photos also show Officer [REDACTED] and Officer [REDACTED] both in full uniform with no apparent injuries. Photographs of Mr. [REDACTED] depict him lying on his back on what appears to be a hospital bed. Mr. [REDACTED] has bandages on his upper right chest/shoulder area.

A search of the I-CLEAR Database revealed no **Police Observation Devices (PODs)**²⁸ near this incident.

¹⁸ Attachment #21.

¹⁹ Attachment #31.

²⁰ During the 2nd canvass on 31 July 2015, [REDACTED] refused to be interviewed. He scheduled an interview at IPRA for 04 August 2015. Mr. [REDACTED] failed to keep that appointment and attempts to contact afterwards were unsuccessful.

²¹ [REDACTED] was identified as a possible witness by [REDACTED]

²² Attachments 21, 31, 38, 42-48, 64-66

²⁶ Attachment #62.

²⁷ Attachment #72.

²⁸ Attachment #13.

There was no **in-car camera**²⁹ recording from the police vehicle assigned to Officer [REDACTED] and Officer [REDACTED]³⁰

During **Recorded Telephone Calls**³¹ Mr. [REDACTED] had with several people while he was incarcerated in Cook County Jail, Mr. [REDACTED] spoke of what occurred the night of this incident. The phone calls took place between July 22 and July 31, 2015. During one of the recorded conversations Mr. [REDACTED] claimed he did not shoot at the police officers. Mr. [REDACTED] claimed to have dropped his gun.

In another recorded conversation, Mr. [REDACTED] told Ms. [REDACTED] that he did not point his gun at the police, and that he had was only holding his cell phone.

In a subsequent recorded conversation, Mr. [REDACTED] stated that he never fired his handgun.

During another recorded conversation with Ms. [REDACTED] Mr. [REDACTED] stated that when the police officers first arrived he walked next to a fire hydrant. Mr. [REDACTED] claimed again that when he ran away from the police he did not draw his gun.

In another recorded conversation, Mr. [REDACTED] and the caller discussed what occurred on the night of the incident. The caller claimed that how Mr. [REDACTED] recalled what occurred is not how the incident unfolded. The caller stated that he did not see a gun in Mr. [REDACTED] hand and that Mr. [REDACTED] had his back turned to the police when he was shot.

In a subsequent recording, Mr. [REDACTED] and “[REDACTED]” discussed the probability that the gun could have been planted in the spot where [REDACTED] fell down the first time.

The remaining recorded telephone calls were not relevant to this investigation.

c. Physical Evidence

The **Chicago Fire Department's Ambulance Report**³² stated that on 22 July 2015, at 0144 hours, Ambulance #1 was dispatched to [REDACTED] regarding a gunshot victim. Ambulance #1 arrived at that location at 0149 hours and the paramedics found Mr. [REDACTED] lying in the prone position and in police custody. It was reported that Mr. [REDACTED] was running from the police when he turned around and pointed a gun at the officers. The officers fired multiple shots, striking Mr. [REDACTED] right shoulder and both of his legs. All wounds appeared to be entrance wounds with no exit wounds noted. At 0205 hours Mr. [REDACTED] was transported, by ambulance, to Stroger Hospital.

²⁹ Attachment #50.

³⁰ This incident predates the District wide issuance of Body Worn Cameras.

³¹ Attachment #79.

³² Attachment #19.

Medical Records³³ obtained from Stroger Hospital stated that Mr. [REDACTED] was transported to the emergency room by Chicago Fire Department ambulance. It was reported that the police shot Mr. [REDACTED] multiple times. Mr. [REDACTED] ran half a block before falling. Mr. [REDACTED] denied any loss of consciousness. Examination revealed that Mr. [REDACTED] sustained a gunshot wound to the right distal supra clavicular area,³⁴ one to the right posterior deltoid,³⁵ and two gunshot wounds to the left lower leg below the knee. The report from the **Illinois State Police Division of Forensic Services**³⁶, dated 03 February 2016, stated that Officer [REDACTED] firearm³⁷ was received and found to contain 4 unfired cartridges.³⁸ Examination determined that 3 of the recovered fired bullets, and 10 of the recovered fired casings, were fired from Officer [REDACTED] firearm.

The report continued that Officer [REDACTED] firearm³⁹ was received and found to contain 9 unfired cartridges.⁴⁰ Examination determined that 9 of the recovered fired casings were found to have been fired from Officer [REDACTED] firearm.

The firearm recovered from the scene⁴¹ was received containing 10 unfired cartridges. It was test fired and found to be functioning properly.

Additionally, 2 recovered bullet fragments, recovered from the street, were examined and found that neither were fired from either officers' firearm. One recovered bullet fragment was unsuitable for examination.

The **CPD Evidence Technician Platt**⁴² depicted that 6 of the fired casings were recovered from the east side of the street at approximately [REDACTED] Street.⁴³ Ten of the recovered fired casings were recovered on the west side of the street, between [REDACTED] and [REDACTED] Street.⁴⁴

d. Documentary Evidence

[REDACTED] **Arrest Report**⁴⁵ stated that he was arrested for Unlawful Use of a Weapon by a Felon in that he was found to be in possession of a semi-automatic handgun. Mr. [REDACTED] was also arrested for Aggravated Assault of a Police Officer in that while armed with the

³³ Attachment #78.

³⁴ Above the right pectoral area. (www.WebMD.com)

³⁵ The back of the right shoulder. (www.WebMD.com)

³⁶ Attachment #77.

³⁷ Glock, Model 21 SF, 45 Caliber, semi-automatic pistol.

³⁸ All unfired cartridges were Winchester 45 Caliber Auto.

³⁹ Glock, Model 17, 9mm Luger, semi-automatic pistol.

⁴⁰ All unfired cartridges were Winchester 9mm Luger +P.

⁴¹ Hi-Point Firearms, Model JCP, 40 Caliber Smith & Wesson semi-automatic pistol.

⁴² Attachment #71.

⁴³ These were determined to have been fired from Officer [REDACTED] firearm.

⁴⁴ 9 of these casings were determined to have been fired from Officer [REDACTED] firearm. The 10th was fired from Officer [REDACTED] firearm.

⁴⁵ Attachment 7.

aforementioned handgun, he turned and pointed it at Officers [REDACTED] and [REDACTED]. It was noted that Mr. [REDACTED] was a member of the Gangster Disciple street gang and was on parole at the time of this incident. Cook County court documents show that on November 11, 2017, Mr. [REDACTED] pleaded guilty to one count of Unlawful Use of a Weapon by a Felon and two counts of Aggravated Assault of a Police Officer. Mr. [REDACTED] was sentenced to three years in the custody of the Illinois Department of Corrections. Mr. [REDACTED] is currently out on parole.

A search of the records of the United States District Court for the Northern District of Illinois shows that on June 20, 2017 Mr. [REDACTED] filed a **civil complaint** against the City, Officer [REDACTED] and Officer [REDACTED] alleging that the officers used excessive force in the arrest of Mr. [REDACTED] under case #17cv [REDACTED]⁴⁶. Mr. [REDACTED] also alleged that the officers falsely arrested him, falsely imprisoned him, and battered him. In his Complaint, Mr. [REDACTED] states that he did not have a weapon that night and the officers planted one after shooting him in an effort to “cover up for their inappropriate, unwarranted, and unjustifiable shooting.” The case was dismissed by the court on March 22, 2018 for “lack of prosecution.”⁴⁷

Officer [REDACTED] Tactical Response Report (TRR) and Officer's Battery Report (OBR)⁴⁸ classifies Mr. [REDACTED] as an Assailant whose use of force was likely to cause death or great bodily harm. Lt. [REDACTED] narrative states that based on what was known at the time of the report, a preliminary determination had been made that Officer [REDACTED] use of deadly force was within Departmental guidelines. The narrative continues that Officer [REDACTED] observed Mr. [REDACTED] remove a handgun from his waistband, turn, and point the firearm in the officers' direction. Officer [REDACTED] and [REDACTED] attempted to conduct a field interview with Mr. [REDACTED] after seeing him make a motion at his waistband consistent with someone carrying a firearm. The TRR stated that Officer [REDACTED] discharged his firearm 10 times at Mr. [REDACTED].

Officer [REDACTED] Tactical Response Report (TRR) and Officer's Battery Report (OBR)⁴⁹ classifies Mr. [REDACTED] as an assailant whose use of force was likely to cause death or great bodily harm. Lt. [REDACTED] narrative states that based on what was known at the time of the report, a preliminary determination had been made that Officer [REDACTED] use of deadly force was within Departmental guidelines. The narrative continued that Officer [REDACTED] observed Mr. [REDACTED] remove a handgun from his waistband, turn and point the firearm in the officers' direction. Officer [REDACTED] and [REDACTED] attempted to conduct a field interview with Mr. [REDACTED] after seeing him make a motion at his waistband consistent with someone carrying a firearm. The TRR stated that Officer [REDACTED] discharged his firearm 9 times at Mr. [REDACTED].

In his **Synoptic Report**, Sgt. [REDACTED] # [REDACTED] from the Bureau of Internal Affairs, reported that on 22 July 2015, at 0410 hours, he responded to the Chicago Police Department's

⁴⁶ Attachments 81-85.

⁴⁷ Mr. [REDACTED] failed to appear at a scheduled court date.

⁴⁸ Attachments 8-9.

⁴⁹ Attachments 10-11.

Area South Detective Division. At 0557 hours Sgt. [REDACTED] provided Officer [REDACTED] with the "Notice of Alcohol and Drug Testing Following a Firearm Discharge Incident" form and then began the twenty-minute observation period of Officer [REDACTED]. At 0619 hours Officer [REDACTED] submitted to the Breath Test. Officer [REDACTED] registered a BrAC⁵⁰ of .000. At 0623 hours Sgt. [REDACTED] collected a urine specimen from Officer [REDACTED]. Officer [REDACTED] urine was subsequently tested and found to be negative for all substances listed on the Substance Abuse Panel.⁵¹

Sgt. [REDACTED] continued that at 0630 hours he provided Officer [REDACTED] with the "Notice of Alcohol and Drug Testing Following a Firearm Discharge Incident" form and then began the twenty-minute observation period of Officer [REDACTED]. At 0651 hours Officer [REDACTED] submitted to the Breath Test. Officer [REDACTED] registered a BrAC⁵² of .000. At 0655 hours Sgt. [REDACTED] collected a urine specimen from Officer [REDACTED]. Officer [REDACTED] urine was subsequently tested and found to be negative for all substances listed on the Substance Abuse Panel⁵³. (Att. 51)

VI. ANALYSIS

A Chicago Police Officer's use of deadly force is governed by: Chicago Police Department's Policy regarding the use of deadly force; Illinois state statutory law; and applicable standards within the United States Constitution. Based on the totality of the circumstances, the involved officers were in compliance with Chicago Police Department policy in using deadly force because it was reasonable for them to believe that they were in imminent danger of death or great bodily harm, given that a suspect they were pursuing had just pointed a weapon at them. Therefore, COPA recommends that the finding be WITHIN POLICY.

A. Applicable Rules and Law

1. Chicago Police Department General Order

According to the Chicago Police Department's General Order 03-02-03, Section II, A⁵⁶:

A sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person, or:

⁵⁰ Breath Alcohol Content.

⁵¹ Amphetamines, barbiturates, benzodiazepines, cocaine metabolites, marijuana metabolites, methadone, MDA-analogues, opiates, oxycodone, phencyclidine, propoxyphene.

⁵² Breath Alcohol Content.

⁵³ Amphetamines, barbiturates, benzodiazepines, cocaine metabolites, marijuana metabolites, methadone, MDA-analogues, opiates, oxycodone, phencyclidine, propoxyphene.

⁵⁶ This was the Use of Force Policy at the time of this incident. It has since been rescinded.

2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
 - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
 - b. is attempting to escape by use of a deadly weapon or;
 - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

2. Illinois and United States Case Law

An officer's use of deadly force is a seizure within the meaning of the Fourth Amendment. When applying the Constitutional standard to a Fourth Amendment analysis, the question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them. Determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) "whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). The analysis of the reasonableness of an officer's actions must be grounded in the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and "allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) (internal quotations and citation omitted). Consequently, "when an officer believes that a suspect's actions [place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force." *Muhammed v. City of Chicago*, 316 F.3d 380, 383 (7th Cir. 2002) (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir. 1988) (*en banc* (omitting emphasis))). Finally, the analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors. *Plumhoff*, 134 S. Ct. at 2020; see also *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003).

3. Illinois Statutory Law

Chicago Police officers are bound by the legal standard in Illinois regarding the use of deadly force, as codified in Illinois State Statute 720 ILCS 5/7-5. The pertinent portion of the statute states that:

...a peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person...

Additionally, Illinois law regarding self-defense is relevant. Self-defense, available to all persons, is codified in Illinois State Statute 720 ILCS 5/7-1(a):

A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.

B. Analysis of the Actions of the Involved Officers

COPA finds in this case, there is a preponderance of evidence that, based on the totality of the circumstances, the involved officers' use of deadly force was within policy. Based on the available evidence, COPA finds that the officers arrived to a scene with a crowd of people, where they noticed Mr. [REDACTED] leaving the group and adjusting his waistband while walking down the middle of the street. They asked Mr. [REDACTED] to stop, at which point he ran away from them and the officers pursued him on foot. At that point the officers visually confirmed that Mr. [REDACTED] had a handgun. Mr. [REDACTED] then turned and began to raise the arm holding the firearm in the direction of Officer [REDACTED]. In response, the officers deployed deadly force. Mr. [REDACTED] after being shot, dropped his gun and continued running and falling to the ground, dropping his gun as he fell. While a crowd of angry onlookers approached the officers and threatened them, Mr. [REDACTED] got to his feet and ran off through an empty lot. Officer [REDACTED] immediately chased Mr. [REDACTED] while Officer [REDACTED] stood guard over the handgun Mr. [REDACTED] dropped. Officer [REDACTED] was able to apprehend Mr. [REDACTED] a short time later.

Mr. [REDACTED] declined to participate in IPRA's investigation, but IPRA was nonetheless able to gather recordings of phone calls Mr. [REDACTED] made from jail, in which he gave conflicting statements about what happened. During the recorded conversations, Mr. [REDACTED] alternately

claimed that he had dropped his gun, and also that he was only holding a cell phone, not a gun. Mr. [REDACTED] also speculated that the gun was not his and had been planted, but in another phone call, said that he had not drawn his gun during the chase. In his civil complaint, signed under penalty of perjury, Mr. [REDACTED] made yet another inconsistent statement: he claimed that he did not have a weapon that night at all, and that the police planted a weapon on or near Mr. [REDACTED] after shooting him, in an effort to cover up their “unjustifiable shooting.” Mr. [REDACTED] has given a considerable amount of conflicting statements both in his civil complaint and jail calls, which are themselves inconsistent with each other. COPA finds that these varied statements provide insight into Mr. [REDACTED] lack of credibility.⁵⁷

There are two other witnesses that provided statements to IPRA: [REDACTED] and [REDACTED]. However, both witnesses provide conflicting statements, and thus are weighted less in the analysis. Ms. [REDACTED] told IPRA that Mr. [REDACTED] never turned and faced the officers; that the only thing he had in his hands was a plastic cup; that she never saw Mr. [REDACTED] in possession of a firearm; and that she never saw a weapon where Mr. [REDACTED] fell. However, these statements are contradicted by Mr. [REDACTED] himself, in his jail calls where he stated that he dropped his gun, and in another call where he stated he did not draw his gun while he was being chased. They are also contradicted by Mr. [REDACTED] guilty plea, in which he admits having a gun during the encounter and placing the officers in fear of receiving a battery. Ms. [REDACTED] is also the only witness to claim that Mr. [REDACTED] had a plastic cup in his hands when he ran. Mr. [REDACTED] similarly, stated that he never saw anything in Mr. [REDACTED] hands; never saw a gun on the ground; and doesn’t think Mr. [REDACTED] had a gun that night. However, Mr. [REDACTED] also stated that his view of the incident was partially obstructed by a tree, and admitted that in the area, “Everyone’s been known to carry a gun here or there.” Again, Mr. [REDACTED] account is also contradicted by Mr. [REDACTED] guilty plea, as discussed above.

Additionally, both officers, as well as witnesses on the scene, say that one of the officers stayed where Mr. [REDACTED] fell while the other continued pursuing him on foot when he got up and ran away again. This lends credence to the officers’ claim that Mr. [REDACTED] dropped his gun there – if he had not, if he had just fallen down then simply got back up and continued running, both officers would have continued the foot pursuit. The fact that one officer stayed behind, ostensibly guarding the dropped gun, corroborates the officers’ account.

While it is notable that Mr. [REDACTED] did not fire his weapon at the officers and perhaps did not even get his arm all the way up to point it directly at the officers, this does not affect the analysis. Courts, in this jurisdiction and across the country, have repeatedly and broadly accepted the notion that officers are not required to wait to act until an armed person actually uses deadly force against the officer. *Montoute v. Carr*, 114 F.3d 181, 185 (11th Cir. 1997) (“. . . an officer is not required to wait until an armed and dangerous felon has drawn a bead on the officer or others before using deadly force); see also *Leong v. City of Detroit*, 151 F. supp.2d 858 (E.D.Mich. 2001),

⁵⁷ Mr. [REDACTED] also entered a plea of guilty on Cook County Case Number 15CR [REDACTED], and was adjudicated guilty for Aggravated Assault to a Peace Officer and Felon in Possession of a Firearm.

holding that regardless of whether the suspect actually pointed his gun at the officers, or instead remained with his back turned, he was quite capable of leveling the weapon at an officer or a bystander and inflicting severe injury or death in an instant, and therefore the use of deadly force was permitted; see also *Anderson v. Russell*, 247 F.3d 125 (4th Cir. 2001), holding that an officer does not have to wait until a gun is pointed at the officer before the officer is entitled to take action; see also *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007), (“Even if we accept that the threat posed by Long to Deputy Slaton was not immediate in that the cruiser was not moving toward Slaton when shots were fired, the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect.”)

This case requires the balancing and reconciliation of two competing principles eloquently outlined in a recent U.S. District Court opinion in a civil matter regarding an officer-involved shooting:

“[A] person has a constitutional right not to be shot unless an officer reasonably believes that he poses a threat to the officer or someone else.” (citing *Weinmann v. McClone*, 787 F.3d 444, 450 (7th Cir. 2015)⁵⁸ for “distilling this rule” from *Graham v. Connor*, 490 U.S. 386, 388 (1989) and *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985)). “On the other hand, police officers have a right to protect themselves, even when they do something risky like “pursu[ing] a fleeing felon into a dark alley.”” (citing *Estate of Starks v. Enyart*, 5 F.3d 230, 233-34 (7th Cir. 1993).⁵⁹

Therefore, COPA finds that, by a preponderance of the evidence, the involved officers’ use of deadly force against the subjects was objectively reasonable, and thus, WITHIN the policy of the Chicago Police Department, as well as in compliance with Illinois state statutes and the applicable standards within the United States Constitution.

VII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

COPA has determined by a preponderance of the evidence that Officers [REDACTED] and [REDACTED] use of deadly force against Mr. [REDACTED] was objectively reasonable as outlined in state and federal law and the Chicago Police Department’s General Orders.

Officer	Allegation	Finding
Officer [REDACTED]	No allegation of misconduct.	Use of deadly force was within CPD policy.

⁵⁸ This case was decided on May 27, 2015, thus it preceded this incident.

⁵⁹ *Childs v. City of Chicago*, 2017 U.S. Dist. LEXIS 45156 (N.D. Ill. 2017)

Officer [REDACTED]	No allegation of misconduct.	Use of deadly force was within CPD policy.
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Acting Deputy Chief Administrator – Chief Investigator

Date

Chief Administrator

8/30/18

Date

Appendix A

Assigned Investigative Staff

Squad#:	8
Major Case Specialist:	[REDACTED]
Supervising Investigator:	[REDACTED]
Acting Deputy Chief Administrator:	[REDACTED]